

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

Tracy O’Neal Gillette, Jr.,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Dakota County, P.D.,

Defendant.

Civ. No. 06-1282 (DSD/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(B), upon the Plaintiff’s Application to Proceed in forma pauperis (“IFP”). The Plaintiff appears pro se and, in view of the fact that his Complaint has yet to be served, no appearance has been made by, or on behalf of, the Defendant.

The Plaintiff, who is a State prison inmate, commenced this action by filing a Complaint seeking relief for alleged violations of his Federal constitutional rights. See, Docket No. 1. The Plaintiff did not pay any filing fee for this action, but instead, filed an application seeking leave to proceed IFP. See, Docket No. 2. We previously reviewed the Plaintiff’s IFP Application, and found that he had failed to provide his

certified trust account information, as is required by Title 28 U.S.C. §1915(a)(2). Accordingly, by Order of April 6, 2006, we directed the Plaintiff to file an Amended IFP Application, along with an initial partial filing fee, as is required by Title 28 U.S.C. §1915(b)(1). See, Docket No. 3. The Plaintiff was further admonished that his failure to comply with these directives, within 20 days of the date of the Order -- that is, by April 26, 2006 -- could result in the case being dismissed for lack of prosecution.

The deadline for satisfying the requirement of this Court's prior Order expired nearly three weeks ago, and the Plaintiff has failed to comply. Therefore, based on the Plaintiff's failure to comply with our Order dated April 6, 2006, and his failure to prosecute this action, we recommend that his Complaint be summarily dismissed, without prejudice, see Rule 41(b), Federal Rules of Civil Procedure (declaring that actions may be dismissed for failure to comply with Court Orders); see also, Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962)(recognizing that a Federal Court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases"); In re Smith, 114 F.3d 1247, 1251 (D.C. Cir. 1997) (advising that the failure to submit financial information required by Section 1915(a)(2), or an initial partial filing fee required by Section 1915(b)(1), "may result

in dismissal of a prisoner's action"), and that the Plaintiff's Application to proceed IFP be denied, as moot.

NOW, THEREFORE, It is --

RECOMMENDED:

1. That the Plaintiff's Complaint [Docket No. 1] be dismissed, but without prejudice, for failure to comply with this Court's Order dated April 6, 2006, and for failure to prosecute.

2. That the Plaintiff's Application to proceed in forma pauperis [Docket No. 2] be denied, as moot.

Dated: May 17, 2006

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than June 5, 2006**, a writing which specifically identifies those portions of the Report to which

objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than June 5, 2006**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.